Federal Child Support Guidelines: A guide to the new approach

Before you use this guide, you should know...

Since the publication of this guide, several technical amendments have been made to the Federal Child Support Guidelines. As a result of these amendments, the following changes now apply to this guide:

Page 4

Step 1 *Do the Federal Guidelines Apply to You?*

c) Provincial legislation, *not* the federal guidelines, will apply to you if:

- you and the other parent were *never married to each other; or*
- you and the other parent are married, have separated, but *are not getting a divorce; or*
- you and the other parent live in a "designated" province and territory. *

* If a province or territory created its own guidelines, the *Divorce Act* allows the federal government to "designate" that province or territory. Once a province or territory has a designation, provincial or territorial guidelines will apply when both parents live in that province or territory. You may wish to check with your provincial Department of Justice or Attorney General's office to learn whether provincial or territorial legislation applies.

Page 10

Step 2 *Determine the Number of Children*

The age of majority for Nunavut is 19.

Pages 16 and 17

Step 5 *Calculate Annual Income*

How to calculate annual income

Start with the "Total Income" line on the paying parent's income tax return and then update it to reflect the most recent income information, such as a change in salary.

Proof of income

The evidence of your income must include tax returns and notices of assessment and re-assessment from the Canada Customs and Revenue Agency for the last three taxation years.

Other material that could be required income information from employment insurance, worker's compensation, disability payments, details of any business partnerships and copies of trust settlement agreements, along with the trust's three most recent financial statements.

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Step 7 *Special Expenses*

According to the rules, special expenses include:

- child-care expenses as a result of the receiving parent's job, illness, disability of educational requirements for employment;
- the portion of a parent's medical and dental insurance premiums that provides coverage for the child;
- the child's health-care needs over and above that covered by insurance (for example, orthodontics, counselling, medication, eye care and other items that exceed $100 per year);
- the child's special educational expenses or extraordinary expenses for extracurricular activities; and
- expenses for post-secondary education.

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Annex B *Other Factors*

The court may consider:

- if income has fluctuated significantly over the past three years;
- if the parent received a one-time amount of money (for example, an inheritance)—all or none of this amount may be included;
- if there were exceptional business or investment profits or losses during a particular year; and
- if the parent is a shareholder, officer or director of a corporation, all or part of the corporation's pre-tax income for the most recent taxation year, or what the person would earn if he or she were being paid for the services provided to the corporation (as long as that amount is less than the corporation's pre-tax income). In determining a corporation's pre-tax income, the court will include the corporation's payments such as salaries, wages, management fees and similar expenses.

Income may also be attributed for purposes of applying the guidelines, for example, where the person:

- is found to be intentionally underemployed or unemployed (unless the reason is related to caring for a child, or reasonable education, or health needs of the parent);
- is not required to pay federal or provincial income tax;
- lives in a country where income tax rates are significantly lower than Canada's;
- has withheld income information;
- gets a large part of income from dividends, capital gains or other sources with a lower or nil tax rate;
- is, or will be, receiving income and other benefits from a trust;
- is placing income elsewhere to conceal it (for example, the paying parent may have too much money tied up in land or business investments, reducing the amount of cash available for child support); or
- unreasonably deducts expenses from income.

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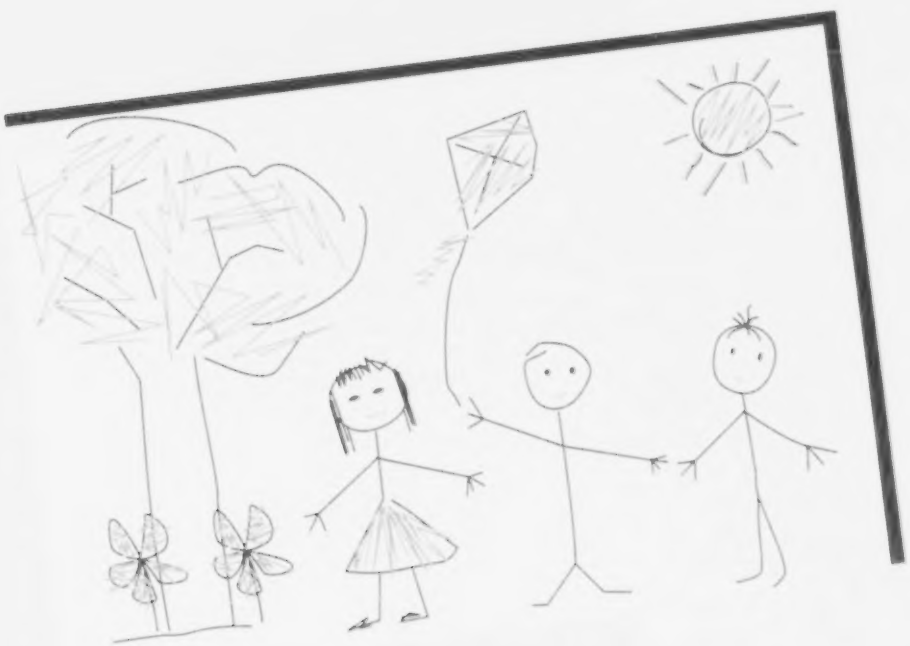
CHILD SUPPORT

GUIDELINES

A guide to the new approach

Department of Justice



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CHILD SUPPORT

GUIDELINES

A guide to the new approach

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For convenience, the masculine pronoun is used in this document to refer to either male or female persons, where the context does not clearly indicate one or the other.

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Before you start...

The federal *Divorce Act* was recently amended to establish the new Federal Child Support Guidelines. This legislation contains a special provision that allows each province and territory to apply its own child support guidelines in situations of divorce where the federal guidelines would usually apply.

When this booklet went to print, only Quebec had its own child support guidelines, scheduled to take effect on May 1, 1997. However, several other provinces and territories were working towards implementing their own guidelines.

To find out whether your province or territory has its own child support guidelines, contact your provincial or territorial Department of Justice or Attorney General's Office. You may also call the Department of Justice Canada toll-free at 1-888-373-2222 or, in the National Capital Region, at 946-2222.

This publication consists of three parts. Part 1 summarizes in general terms what the guidelines are about and how to use them. Part 2 explains the guidelines in more detail and provides enough information for most people to be able to estimate how much child support would be appropriate in their situation. Part 3 concentrates on specific aspects of the guidelines and presents material that may be useful in certain situations.

Part 1 *Information About the Guidelines: How to Use Them in Simple Cases*

On May 1, 1997, the new Federal Child Support Guidelines were proclaimed into law, changing the manner in which child support amounts are determined under the *Divorce Act*. The guidelines consist of a set of rules and tables for calculating the amount of support that a paying parent should contribute toward his or her children, taking into account three main factors:

- level of income,
- number of children, and
- province or territory of residence.

The guidelines are designed to protect the best interests of the children. They ensure that children get appropriate, consistent child support from both parents. They also make it faster, easier and less expensive for parents to arrive at an amount.

The Guidelines Are Mandatory

The word "guidelines" may suggest that the child support tables and the guidelines are only a reference tool. This is wrong. In fact, a court is required to apply the guidelines in almost every case, with very few, limited exceptions. For the court, the guidelines, including the table amounts, are mandatory. This is important for couples who wish to settle out of court. If you know in advance what a court must order for child support in your case, much of the conflict in arriving at a mutually acceptable amount is eliminated.

This is the purpose of the guidelines: to reduce conflict and the need for lengthy negotiations regarding the amount of child support. In this way, parents will be able to determine, without the assistance of a lawyer, the table amount of child support a court would order.

The tables are a useful tool for parents whose circumstances are relatively straightforward. Adjustments to the table amounts may be made to account for special expenses such as day care, undue hardship, shared or split custody, exceptionally high income, or children over the age of majority.

In any divorce or separation, five potential issues must be resolved:

- custody,
- access,
- child support,
- spousal support, and
- division of property.

The new guidelines deal with the issue of child support. This publication provides the basic information about these guidelines. It is not intended to provide legal advice. For that type of assistance, you should see a lawyer.

Changing an Existing Court Order or Agreement

If you are applying for a divorce under the *Divorce Act* and will pay or receive child support, the amount of child support will be set by agreement, consent order or court order.

The guidelines do not automatically affect child support orders under the *Divorce* Act or written agreements made before May 1, 1997.

If either parent wants to change the amount of child support, he or she will have to do so by amending the existing written agreement, by obtaining a new court order or amending the existing court order. The guidelines **may** be used by the parents or, if they cannot agree, **must** be used by the court to determine the appropriate amount, except in a few situations.

If either an order or written agreement changes the amount of child support, *new tax rules will apply*. Parents who are unsure of how a change in their existing order or agreement might affect them or their children may find it useful to seek professional advice before making a change.

For more detailed information, see Part 2, Step 1, on page 9.

Eight-Step Summary

This booklet explains in eight steps how to calculate child support based on level of income, number of children, province or territory of residence, and special expenses such as child care. Many people will find that the first eight steps – those dealing with the tables and special expenses – are sufficient. Step 8 and the "Other Rules" section discuss more complicated cases. Following is a summary of the eight steps. More detail is presented in Part 2 of this booklet.

Step 1 *Do the Federal Guidelines Apply to You?*

a) The federal Child Support Guidelines will apply to you if:

- your divorce application will be heard **after April 30, 1997**, and you will pay or receive child support; or
- you already have a child support order obtained under the *Divorce Act* (which is under federal jurisdiction) before May 1, 1997, and either parent applies to change the amount. (If you are unsure whether your child support order was issued under federal or provincial law, you may find this information written on the order itself. If the order states that it is issued under the *Divorce Act*, then federal law applies.)

b) The federal Child Support Guidelines will *not* apply to you if:

- you and the other parent already have a mutually satisfactory agreement or court order for child support in place, and neither of you plans to change it.

c) Provincial legislation, *not* the federal guidelines, will apply to you if:

- you and the other parent were *never married to each other; or*
- you and the other parent are married, have separated, but *are not getting a divorce.*

You may wish to check with your provincial Department of Justice or Attorney General's office to learn whether provincial or territorial guidelines are in effect. It may be that the federal guidelines have been adopted for provincial purposes, in which case this booklet can still be useful to you.

Step 2 *Determine the Number of Children*

Parents must determine which children are being considered for support and whether or not the children have reached the age of majority. The guidelines apply to children, as defined by the *Divorce Act*, including:

- children of the husband and wife who are under the age of majority – the age of majority is either 18 or 19, depending on the province or territory in which the child resides. (see the table on page 10);

- children to whom either the husband or wife has acted in place of a parent (for example, in a second marriage, the court may recognize that one spouse must pay child support because he or she has acted as a parent to the other spouse's child); and

- children who have reached the age of majority but are still dependent on the parents owing to illness, disability, or other cause (the courts have generally interpreted "other cause" as including reasonable education).

Step 3 *Determine Type of Custody Arrangement*

Custody arrangements make a difference in how the tables are used. In most cases, parents agree between themselves, with or without the help of a lawyer, on the type of custody suitable for their families. Most often, it is a sole physical custody arrangement. That is, the children reside with one parent most of the time and spends less than 40 percent of the time with the other parent. If the court is asked to resolve the issue, it will base its decision on what is in the best interests of the children.

In the case of sole physical custody arrangements, the amount of child support is calculated in a straightforward manner. Other types of custody may require different calculations. The guidelines also explain how to calculate child support amounts when other types of custody are involved (see Step 3 in Part 2).

Step 4 *Choose the Appropriate Federal Table*

Where you and the other parent live makes a difference. The federal tables are presented by province and territory. The appropriate table depends on three factors:

- the province or territory in which the paying parent lives,
- whether the parents live in the *same* province or territory, and
- whether that province or territory has its own child support guidelines.

See pages 15 and 16 to assist you in choosing the appropriate table.

Step 5. *Calculate Annual Income*

"Annual income" refers to income, before taxes, from all sources. In the majority of cases, only the income of the paying parent is necessary. For this reason, it is usually not necessary for the receiving parent to calculate his or her income.

For most people, especially those who are employees, annual income is easy to determine by looking at the "Total Income" line on the individual's income tax return. In other cases, where parents are self-employed, have investment income, property, or other assets, or are directors or shareholders in a corporation, determining annual income can be more complicated. If both parents agree in writing on the annual income of a parent and the court thinks the amount is reasonable, the court may use that amount.

Anyone whose income is a factor in the determination of child support is legally obligated to present evidence of his or her income every year if the other parent requests it in writing. The evidence must include income tax returns and notices of assessment from Revenue Canada for the last three taxation years. Depending on the circumstances, other information may also be required.

If income changes from year to year, the amount of child support can easily be adjusted using the guidelines. In these cases, parents can agree on the new amount or either parent may ask the courts to decide and the court will have to apply the guidelines.

Step 6 *Determine the Table Amount*

Once you have determined the "number of children" and the "level of income" for the parent (or parents) paying child support, you can find the monthly amount of child support on the relevant provincial table by locating the income level, then moving to the right under the column for the number of children. (See example, page 7)

Step 7 *Special Expenses*

The amounts listed in the tables are only starting points. They are based on an average of what parents at various income levels spend on their children. In many cases, families have special expenses, such as child care, and the parents may agree to divide them in proportion to their income. The parents can decide (or the courts will if the parents cannot agree) whether a special expense is reasonable and necessary for the child and should be added to the basic table amount.

Step 8 *Undue Hardship*

Because the tables are based on average amounts spent on raising a child at various income levels, the majority of Canadians will be able to pay the amounts indicated. In rare cases, the table amount, or the table amount plus special expenses, can cause undue hardship to either parent or to the child. In these cases, either parent may ask the court to set the amount of child support at a higher or lower level.

Example - Finding the Table Amount - Sole Physical Custody

This example explains how parents will find the table amount in a sole physical custody situation. Daniel and Nicole are divorcing after 15 years of marriage. Both are residents of Alberta. They have three children, ages 13, 11 and 9. Daniel and Nicole agree that all three children will live in Nicole's custody. Daniel is a teacher, earning $40,000 a year; Nicole works as a secretary, with a salary of $20,000.

Step 1 (Do the guidelines apply to you?)

Daniel and Nicole are married and seeking a divorce, so they know that the federal guidelines will apply to them.

Step 2 (Determine the number of children)

The number of eligible children is simple to determine – all are under the age of majority so all qualify for the table amount of support.

Step 3 (Determine type of custody arrangement)

Daniel and Nicole agree that all three children will live with Nicole.

Step 4 (Choose the appropriate federal table)

Both parents will continue to reside in Alberta after they separate, so they know that the federal Alberta tables apply to them, as that province has not yet adopted its own guidelines.

Step 5 (Calculate income)

Daniel earns $40,000 and will use his total income as found in his Income Tax Return or T4 slip. Both Daniel and Nicole agree that there are no special expenses, so the determination of Nicole's income is not required in order to use the tables.

Step 6 (Determine table amount)

Daniel and Nicole are now ready to look at the tables. Turning to the Alberta table, they locate Daniel's income of $40,000 on the table, then move to the right under the "3" column for number of children, where they find that the appropriate level of support is $750 a month.

Step 7 (Special expenses)

They both agree there are no special expenses.

Changes in Taxation Rules for Child Support

The guidelines are part of a package of new child support measures, which also include important changes to the way child support payments are taxed. The *Income Tax Act* has been amended so that, for new orders and agreements or for variations of existing orders and agreements made after April 30, 1997, the receiving parent no longer pays tax on the child support received and the paying parent no longer obtains a tax deduction for the amount paid.

Although the federal guidelines for child support do not apply to orders made under provincial legislation, the new tax treatment does not make a distinction between federal and provincial legislation. The new tax rules apply to all child support orders, agreements or variations of child support orders made after April 30, 1997.

The tax changes do not apply to spousal support. Spousal support payments paid on a periodic basis under a written agreement or court order will remain deductible from income by the payer and included in the income of the recipient for income tax purposes.

Please see Part 3, Annex A, for more information. You can also contact Revenue Canada at 1-800-959-8281 for more details.

Part 2 *More Information About the Steps*

This part of the booklet does not repeat Part 1 but simply expands on the eight steps discussed in Part 1. It explains the steps in enough detail that, in most cases, people will be able to estimate how much child support would be appropriate in their situation. Additional examples help to make the steps clearer. Part 2 also includes a section entitled "Other Rules" that applies in a relatively few cases. It ends with a section entitled "Frequently Asked Questions," which provides more information about the guidelines.

Step 1 *Do the Federal Guidelines Apply to You?*

By reviewing the material outlined in "Before You Start" and in Part 1, Step 1, you have determined whether or not the federal guidelines apply to you.

As mentioned in the summary, the guidelines do not automatically change child support orders made under the *Divorce Act* or written agreements made before May 1, 1997. However, if either parent wants to change the amount of child support currently being paid or received, he or she can do so. The guidelines **may** be used by the parents or, if they cannot agree, **must** be used by the court to determine the appropriate amount.

If you are applying for a divorce under the *Divorce Act* and will pay or receive child support, the amount of child support will be set by agreement, consent order or court order.

If the parents agree...

> **Agreement:** Parents, with or without the help of a lawyer, may enter into a written agreement without going to court, specifying the amount of child support to be paid. The guidelines may be used as an indication of what is fair and in the best interests of the children. Parents can agree on child support without involving the courts, but it may be a good idea for each parent to consult a lawyer regarding their legal rights. You may also wish to have your existing agreement reviewed to find out if and how the guidelines and the new tax treatment would alter the amount that you currently pay or receive. Either parent can still go to court to have the guidelines applied.
>
> **Consent order:** A consent order is similar to a written agreement between the parents except that it is registered with the court and looks a little different. It can be used when the parties agree to change an existing court order (by consent or not). In these cases the judge will refer to the guidelines to make sure that the amount of child support is reasonable and in the best interests of the children.

If the parents cannot agree...

Court order: When parents are unable to agree on the amount of child support, a parent may ask the court to decide this matter for them. The judge **must** apply the guidelines, where relevant, in setting the amount of support.

Step 2 *Determine the Number of Children*

Two issues need to be addressed in **Step 2**. The first involves determining which children are being considered for support. The second concerns whether or not these children have reached the age of majority.

The guidelines apply to children, as defined by the *Divorce Act*:

- children of the husband and wife who are under the age of majority (the age of majority is either 18 or 19, depending on the province or territory in which the child resides);
- children to whom either the husband or wife has acted in place of a parent (for example, in a second marriage, the court recognizes that one spouse must pay child support because he or she has acted as a parent to the other spouse's child – in this case, the table amount is advisory only); and
- children at or over the age of majority but still dependent on the parents due to illness, disability, or other cause (courts have generally interpreted "other cause" as including the pursuit of reasonable education).

In determining the number of children, do not include children from other relationships.

Children at or over age of majority

In cases where the child is at or above the age of majority, parents may choose to use the amount indicated in the table, as if the child were below the age of majority. Or, the parents may decide upon a different amount of child support for that child, if the table amount is not appropriate given the child's needs and circumstances.

Age of Majority by Province or Territory

Provinces where the age of majority is 18:

Alberta	Ontario
Manitoba	Quebec
Saskatchewan	Prince Edward Island

Provinces and territories where the age of majority is 19:

British Columbia	Nova Scotia
New Brunswick	Yukon
Northwest Territories	Newfoundland

If the parents cannot agree on which children are eligible for child support or how much should be paid in the circumstances, either parent can ask the court to decide this for them. The court may either apply the table amount or set another amount, after taking into consideration the age of the child and the means, needs and income of the child and each of the parents.

Step 3 *Determine the Type of Custody Arrangement*

The type of custody arrangement makes a difference in how the tables are used. There are many different ways to describe post-divorce parenting arrangements which, in most cases, are agreed to by the parents themselves, with or without the help of a lawyer.

Types of Custody

Daniel and Nicole have three children:

- **Sole physical custody** - all children live with Nicole and spend less than 40% of the time with Daniel.
- **Split custody** - two children living with Nicole; the other with Daniel.
- **Shared custody** - the children live at least 40 per cent of the time with each of their parents over the course of a year.

Sole Custody

While various terms can be used to describe parenting arrangements, in this guide we have used the term "sole physical custody" to refer to all arrangements where the child resides less than 40 percent of the time, over the course of the year, with the paying parent. In all sole custody cases, the amount of child support shown in the table applies in a straightforward manner.

If you have a sole physical custody arrangement, you may wish to read the example on page 13 and then move to **Step 4.**

Split Custody and Shared Custody

Two other types of custody arrangements also exist – split custody and shared custody. When these arrangements are in place, the tables are used differently.

Split custody occurs when each parent has custody of one or more of the children. In this situation, each parent must calculate how much child support is payable to the other parent for the child or children in the custody of the other parent, in accordance with the tables. Next, any special expenses are divided between the parents in proportion to their respective incomes. Then, the parent required to pay the higher amount would pay to the other parent the difference between the two amounts.

Shared custody. Some parents opt for a custodial arrangement that they often call "joint custody," which refers to the fact that both parents retain responsibility and authority for the care and control of the child. This terminology can cause confusion because it can mean either:

- joint "physical" custody where the child actually lives with each of the two parents on a near-equal basis, or
- joint "legal" custody that does not relate to where the child lives but rather to the fact that each parent has an equal voice in the child's education, upbringing and general welfare.

Under the guidelines, "shared custody" rather than "joint custody" is used and has a special meaning with important consequences for the determination of the amount of child support. If the paying parent has the children in his or her care at least 40 percent of the time over the course of the year, the guideline amounts will not automatically apply. A different amount may be ordered or agreed upon. It is useful to know that, if a court were asked to make a decision in this situation, it would take into consideration:

- the appropriate table amount for each parent;
- the increased costs of shared custody arrangements; and
- the financial circumstances and needs of the child and each parent (for example, who pays most of the child's day-to-day expenses).

In shared custody cases, the court may award an amount either greater or lower than the table amount. For the situation to qualify as shared custody, each parent must have physical custody or access to the children for *at least* 40 percent of the time.

Example — Sole Physical Custody — Child over the age of majority — Parents live in two different provinces

This example explains how to find the table amount in a sole custody situation in which the parents live in different provinces. Assuming for a moment that Daniel has decided to move to Ontario, while Nicole and the children remain in Alberta. Also assume that one of the children is over the age of majority but still dependent on her parents for support. The guidelines would be applied in the following manner:

Step 1 **(Do the guidelines apply to you?)**
As the parents are divorcing, the federal guidelines apply.

Step 2 **(Determine the number of children)**
There are three children of the marriage, but as Jane, the eldest, is over the age of majority, Nicole and Daniel must agree on how she is to be treated for child support purposes.

Step 3 **(Determine type of custody arrangement)**
All of the children still reside with Nicole.

Step 4 **(Choose the appropriate table)**
With Daniel living in Ontario, the tables for Ontario will apply.

Step 5 **(Calculate income)**
Daniel's salary is $40,000, the same as in the earlier example.

Step 6 **(Determine the table amount)**
Daniel and Nicole may select the guideline amount for Ontario, which for three children would be $748 per month. Or, if they wished, they could apply the guideline amount for the two younger children, which would be $570, and agree on another amount for Jane. Perhaps Jane earns a substantial part-time income which may reduce the amount of support, or perhaps her education costs are expensive and the amount should be increased. If Nicole and Daniel cannot agree on an amount and the matter must be resolved in court, the incomes of both parents and Jane's age, means and needs will be taken into account by the court in determining support, which may or may not be different from the guideline amount.

Example — Split Custody

This example explains how to find the table amount in a split custody arrangement when the parents live in the same province. Daniel and Nicole reside in Alberta and the children are under the age of majority. If they had a different custody arrangement so that two children were in Nicole's custody and one child was in Daniel's custody, the tables would be applied as follows:.

Step 1 (Do the guidelines apply to you?)
Daniel and Nicole know that the federal tables apply to them.

Step 2 (Determine the number of children)
Three children, all under the age of majority.

Step 3 (Determine type of custody arrangement)
Daniel and Nicole have agreed that two of the children will reside with Nicole and the other child will live with Daniel.

Step 4 (Choose the appropriate table)
They use the Alberta table, as both parents live in the same province and that province does not yet have its own child support guidelines.

Step 5 (Calculate income)
Daniel earns $40,000 a year and Nicole earns $20,000, as determined from their income tax returns.

Step 6 (Determine the table amount)
Nicole and Daniel will use this information to look at the tables to determine the monthly amount each will pay. Nicole will pay support for the one child who is in Daniel's care, while Daniel will pay support for the two children in Nicole's care. Support under the guidelines would be calculated by determining the amount of Nicole's support obligation for the child in Daniel's care and subtracting it from the amount of support payable by Daniel for the two children in Nicole's care. Daniel and Nicole look at the table for their income amounts. At $20,000, Nicole is required to pay $171 per month for one child, while Daniel, at $40,000, would have to pay $571 per month for two children. After subtracting Nicole's support amount of $171 from Daniel's support amount of $571, Daniel would pay to Nicole $400 ($571 minus $171) per month for child support.

Step 4 *Choose the Appropriate Federal Table*

The guideline tables are presented by province and territory of residence to reflect slight differences in provincial and territorial tax rates. Select the federal table that corresponds to the province or territory in which the paying parent resides.

The name of the province is printed in the top right-hand corner

Alberta

Federal Child Support Amounts: Simplified Tables
Montants fédéraux de pensions alimentaires pour enfants :
Tables simplifiées 1997

Income/ Revenu ($)	Monthly Award/ Paiement mensuel ($) — No. of Children/ Nbre d'enfants				Income/ Revenu ($)	Monthly Award/ Paiement mensuel ($) — No. of Children/ Nbre d'enfants				Income/ Revenu ($)	Monthly Award/ Paiement mensuel ($) — No. of Children/ Nbre d'enfants			
	1	2	3	4		1	2	3	4		1	2	3	4
27900	250	421	557	669	***33200***	292	486	641	768	***38500***	335	552	726	868	***43800***	379	621	815	973
28000	251	422	559	671	***33300***	293	487	642	770	***38600***	335	553	727	870	***43900***	380	622	816	975
28100	252	424	561	673	***33400***	294	488	644	771	***38700***	336	554	729	872	***44000***	381	624	818	977

When both parents live in the same province or territory and that province or territory does **not** have its own guidelines, the federal table for that province should be used to find the amount of child support.

When both parents live in the same province or territory and that province or territory **does** have its own guidelines, those provincial or territorial guidelines apply. Ask the province or territory for more information.

When the parents live in different provinces or territories, choose the federal table for the province or territory where the paying parent lives, **even if** there are provincial or territorial guidelines.

How to Get the Tables

Call us at 1-888-373-2222 or 946-2222 in the National Capital Region, and to ensure that we send you the correct table, tell us:

- where the paying parent lives;
- whether both parents live in the same province or territory; and
- the number of children to be supported.

If one of the parents lives outside Canada, use the federal table for the province or territory in which the parent who still lives in Canada resides.

Step 5 *Calculate Annual Income*

The annual income of the paying parent is a key factor in determining child support amounts from the tables. Annual income is the amount of money a person earns from all sources, including employment, self-employment and investments. In general, the more a person earns, the more that person must pay in child support.

Alberta

Income/ Revenu ($)	Monthly Award/ Paiement mensuel ($)			
	No. of Children/ Nbre d'enfants			
	1	2	3	4
33200	292	486	641	768
33300	293	487	642	770
33400	294	488	644	771
33500	295	490	646	773
33600	295	491	647	775
33700	296	492	649	777
33800	297	493	650	779
33900	298	494	652	781

How to calculate annual income

In most cases, annual income is easy to determine from the "Total Income" line on the paying parent's income tax return, especially if he or she is a salaried employee. "Annual income" refers to gross income, before taxes, from all sources, subject to some minor adjustments. The guidelines may be applied, using that amount.

If parents are self-employed, have investment income or property, or are directors or major shareholders in a corporation, determining annual income can be more complicated. In these cases it may be wise to consult a lawyer. Note that "income" is calculated differently for purposes of the guidelines than it is for income tax purposes.

Other factors in determining annual income

If a parent believes that his or her income for tax purposes (or that of the other parent) does not provide a fair description of that person's income, he or she can ask the court to look at other factors to assess the correct level of income. **In most cases, calculation of income will be straightforward.** Parents will have full knowledge of the other's income and will be able to agree on that amount. (For more information, see Part 3, Annex B, "Other Factors in Determining Annual Income for Purposes of the Guidelines.")

Below minimum income

The guidelines set a minimum income level below which payments are not required. This amount represents the basic amount of income a person requires to meet his or her basic needs. In some cases, however, the court may attribute income to a parent where the court is of the opinion that the income claimed does not accurately represent the actual or potential income of the individual.

Who must provide income information

Usually, only the income of the paying parent is necessary to apply the tables. The receiving parent will usually have to provide income information only if there are special expenses (see **Step 7**) or if undue hardship is claimed (see **Step 8**), if there is split or shared custody (see **Step 3**), where the child is over the age of the majority (see **Step 2**) and where the payer earns more than $150,000. If income changes, either parent may decide that it is appropriate to change the amount of child support. This can be done either by agreement or by court order.

Proof of income

If your income is a factor in the determination of child support, you have a legal obligation to present evidence of your income. In all cases, the paying parent must provide this evidence and, as mentioned earlier, in certain circumstances, the receiving parent must as well.

The evidence must include income tax returns and notices of assessment from Revenue Canada for the last three taxation years. Depending on the circumstances, other information may also be required. For example, employees must provide the most recent statement of earnings or a letter from their employer verifying their salary or wages. Self-employed people or individuals in control of a corporation must provide financial statements. Other material that could be required includes details of any business partnerships and copies of trust settlement agreements, along with the trust's three most recent financial statements.

If both parents agree in writing on the annual income of a parent and the amount seems reasonable, the court will assume it to be correct.

Parents must supply the documents

If a parent does not supply the documents necessary for proof of income, the court may order that he or she do so or face serious penalties, including contempt of court proceedings and payment of legal costs.

Annual updates of income information

The receiving parent may request from the other parent proof of income for any taxation year after a court order is in place. The request must be in writing and may be made no more than once a year. The law requires that the other parent provide the documents when requested. The paying parent may make the same request, including current information about the status of any special expenses or the circumstances giving rise to undue hardship, if the receiving parent's income was a factor in determining the child support amount.

Step 6 *Determine Table Amount*

Once you have determined the number of children and the level of income for the parent (or parents) paying child support, you can find the monthly amount of child support on the relevant provincial table by locating the income level, then moving to the right under the column for the number of children.

Step 7 *Special Expenses*

The amounts in the tables are a starting point. They are based on an average of what parents at various income levels spend on their children. In many cases, special expenses arise, and the parents may agree on how to divide up payment for them.

The parents are free to decide whether a special expense is reasonable and necessary and, for this reason, should be added to the basic table amount. The special expenses, even those expected years later, may be listed in the agreement between the parents. For example, when a married couple with two small children is divorcing, the parents may wish to divide payments for uninsured dental expenses, day care and university tuition.

According to the rules, special expenses include:

- child-care expenses as a result of the receiving parent's job, illness, disability or educational requirements for employment;
- the portion of a parent's medical and dental insurance premiums that provides coverage for the child;
- the child's health-care needs over and above that covered by insurance (for example, orthodontics, counselling, medication, eye care and other items that exceed $100 each per year);
- the child's special educational expenses or extraordinary expenses for extracurricular activities; and
- expenses for post-secondary education.

The parents can agree on which special expenses, if any, are reasonable and necessary, and how much each parent will contribute to them. As a general rule, each parent shares in the expense in proportion to his or her income, but the parents may agree to any other method of dividing payment.

Example — Special Expenses

This example explains how parents would deal with special expenses (in this case, day care). Let's turn back to our first, basic example, where Daniel and Nicole have agreed that Nicole would have sole custody of their three children.

Step 1 (Do the guidelines apply to you?)
Daniel and Nicole use the federal tables.

Step 2 (Determine the number of children)
Three children, all under the age of majority.

Step 3 (Determine type of custody arrangement)
In this example, we are assuming that Nicole has sole custody of the three children.

Step 4 (Choose the appropriate table)
They use the Alberta table.

Step 5 (Calculate income)
Daniel earns $40,000 a year and Nicole earns $20,000.

Step 6 (Determine table amount)
Let's say Daniel and Nicole have agreed on the table amount for three children, which would be $750 per month in Alberta.

Step 7 (Special expenses): Nicole and Daniel agree that a day-care expense (taking into consideration the tax deduction Nicole will receive for child-care expenses) of $300 a month is necessary and that a sum must be added to the support amount of $750 that Daniel pays. Because such expenses are normally divided in proportion to their respective incomes, Nicole and Daniel apply that principle to the expense amount of $300. To calculate how much of the $300 in day-care expenses each parent will pay, Daniel and Nicole would first, calculate the total income of both parents by adding both their incomes ($40,000 plus $20,000 = $60,000). Then, to find out how much Daniel would pay, they would divide Daniel's income by the total income and multiply the result by the expense amount.

$40,000 divided by $60,000 multiplied by $300 equals Daniel's share of the expenses:

$$\frac{\$40{,}000}{\$60{,}000} \times \$300 = \$200$$

Nicole's share will be the difference between Daniel's share and the total expense. Therefore, Daniel would pay $200 and Nicole would contribute $100 to cover the total expense of $300. Daniel's $200 would be added to the table amount of support of $750. In this example, he would pay the table amount of $750, plus $200 for his share of the day-care expense, for a total amount of child support of $950 per month.

If the parents cannot agree as to whether or not an expense should be "added on" to the table amount, or what that amount should be, either parent may apply to the court to decide this for them. The court will look at the necessity and reasonableness of the expense. If it agrees that the expense is reasonable and necessary, the court will divide the costs between the parents after considering money from other sources (for instance, a university scholarship), benefits and income tax deductions or credits relating to the expense.

Step 8 *Undue hardship*

In some cases, the table amount, or the table amount plus special expenses, can cause undue hardship to either parent or to the child. In these cases, either parent may ask the court to set the amount at a higher or lower level.

The court must go through a two-step test in assessing "undue hardship."

1. Would the payment actually cause undue hardship? The parent requesting the change must show that he or she is in circumstances that would make it difficult either to pay the required amount or to support the child on that amount. This could include:

- unusually high debts that resulted from supporting the family or earning an income before the parents separated;
- high expenses associated with access to the child;
- a legal duty to support another individual; or
- a legal duty to support a child, other than a child of the marriage, who is under the age of majority or, owing to illness, disability or other cause (including education) cannot support himself or herself.

2. Does the parent asking for the change have a lower standard of living than the other parent? The rules set out one method to establish standards of living for the two households. The court will look at the income of every member of each household to compare their standards of living. If the parent claiming undue hardship is not able to prove that his or her standard of living is lower than the other parent's standard of living, the court must reject the claim of undue hardship.

As making a claim of undue hardship can be somewhat complex, you may wish to consult a lawyer if you are thinking of taking such a step. Also, the Department of Justice's Workbook on Child Support may be helpful.

Example — Undue Hardship

This example explains what a court might consider in a case of undue hardship. Samuel and Diane are divorced and live in Alberta. In their 1992 divorce settlement, Samuel agreed to pay Diane $675 (deductible and taxable) in child support for their two young children.

Step 1 (Do the guidelines apply to you?)
Yes, Samuel and Diane are divorced, so they know that the federal tables apply to them.

Step 2 (Determine the number of children)
They have two children, both under the age of majority.

Step 3 (Determine type of custody arrangement)
Diane has sole custody of the two children.

Step 4 (Choose the appropriate table)
The Alberta tables will apply, as both parents live in the same province and that province does not yet have its own child support guidelines.

Step 5 (Calculate income)
Samuel earns $50,000 a year and Diane earns $30,000, as determined from their income tax returns.

Step 6 (Determine the table amount)
Using the Alberta table, Samuel and Diane look down the income column to $50,000 and to the right under the "2" column for number of children, and see that the table amount for Samuel to pay is $701.

Step 7 (Special expenses)
$1,000 a month is required for child care. Diane and Samuel divide these costs in proportion to their income (See the example on page 19.)

Step 8 (Undue hardship)
Samuel has remarried and has two more children. His second wife is able to work only on a part-time basis because of a chronic illness and the ages of the two children, who are both under three. Under the 1997 guidelines, we know that Samuel would pay Diane $701 (not deductible nor taxable) per month for the children, plus a proportionate share of the child-care costs. Samuel pleads "undue hardship" to the court. In making a decision on this issue, the court will assess Samuel's current financial situation to see if the guidelines create undue hardship for him. It will then look at which household has the higher standard of living. If Samuel's standard of living is higher, he will have to pay the increase; if it is lower, he may not be required to and the court will determine the appropriate level.

Based on steps 1 to 8, most people will have enough information to estimate the amount of child support payable. If so, you may wish to move to "Frequently Asked Questions." Other parents may have additional matters to consider. These are dealt with in "Other Rules."

Other Rules

There are certain circumstances which, if they apply to your case, would give you the right to request an increase or decrease from the guideline amount of child support that you must pay or receive.

When the paying parent's income is more than $150,000 a year

The court has several options. First, it must use the applicable table to set an amount based on the first $150,000. It may then order an additional amount based on the income over and above the $150,000 by either:

- using the percentage presented at the bottom of the table, or
- determining an appropriate amount based on all relevant circumstances of the parents and the child such as the age and income of the child.

For example, the court could look at whether the child is over the age of majority, and is earning an income as well as the income of the receiving parent.

Example: Incomes Over $150,000

Martin and Suzanne live in British Columbia and are in the process of divorcing. They have three children, ages 12, 10 and 8. Martin earns $180,000 a year. Suzanne earns $60,000, and has sole custody of the children. They know, by following steps 1 through 5, that the federal guidelines apply to them, that they are determining support for three children, all of whom are in Suzanne's custody, that they should use the federal table for British Columbia and that Martin's income is $180,000.

They look down the income column to $150,000 and across to the "3" column for the number of children and see that $2,228 per month is the appropriate amount for the first $150,000 of income. As for the remaining $30,000 of income, Martin and Suzanne have two options. They may choose to increase the child support amount by applying the percentage (1.27%) shown at the bottom of the table (1.27% of $30,000 = $381). In this case, $381 would be added to $2,228 for a total monthly payment of $2,609. Or, they can determine an alternative amount based on needs, means or other circumstances.

If they are unable to agree, the court may choose to set this amount That amount may or may not reflect the result of applying the percentage figure in the table but, in any event, it will not be less than the amount for the first $150,000 (that is, in Martin's case, $2,228).

Special Provisions

In some cases, there are "special provisions" that directly or indirectly benefit the child. These must be considered before setting child support amounts. These special provisions must be in the parents' written agreement, and to ignore them would mean that application of the guideline amount would be inappropriate or unfair. For example, the paying parent may transfer his or her interest in the family home to the receiving parent. If this transaction provides a benefit to the children living in the home, it may be unfair to require the paying parent to pay the guideline amount, and a lower child support payment may be in order. The court will take these special provisions into account in deciding an appropriate amount of child support.

Frequently Asked Questions

How did the Department of Justice arrive at the child support amounts shown in the tables?

The figures in the tables are based on the average amount of money that Canadians at various income levels spend to raise a child. This helps to ensure that all families in similar circumstances (that is, living in the same province or territory and with the same income and number of children) pay the same basic amount of child support before adjustments are made. The amounts are also intended to ensure that paying parents can still support themselves. The amounts vary by province and territory to account for differences in provincial and territorial income tax rates.

Do the guidelines take into account the income of the receiving parent?

Studies show that there is no single fixed "cost of raising a child." Parents spend more on their children as family income increases, with the proportion of family income devoted to children remaining the same across all levels of income. So the cost of raising a child depends on how much income and how many children the family has.

The guidelines set the paying parent's contribution in accordance with the average proportion of income that a person at that income level spends on his or her children. In other words, the guidelines ask "what would a parent with this income usually spend on his or her children?" and then set the support payment accordingly. The parent's financial contribution is set according to his or her own income.

The receiving parent is expected to contribute a similar share of his or her income to meet the costs of raising the child. The standards of living of the child and the receiving parent are inseparable because the child resides in his or her household. This approach allows the children to continue to share in increases or decreases in their parents' income, just as they would have if the two parents had continued to live together.

It should be noted, however, that the receiving parent's income must be considered in determining special expenses or undue hardship; when child custody is split or shared; when the child is over the age of majority; and if the paying parent earns more than $150,000 a year.

If either parent remarries, does the income of the new spouse make a difference in the child support amounts?

The only time a new spouse's income is a factor is when either parent pleads undue hardship. In making a determination of undue hardship, the court must compare the standards of living of the two households – that is, the receiving parent's household and the paying parent's household are compared to determine which is higher or lower. In doing so, the court takes into account the income of every member of each household. The new spouse's income is not relevant in determining the actual amount of child support to be paid. (See pages 20 and 21)

In considering special expenses and undue hardship, does it matter what kind of custody arrangements are in place?

Yes, for special expenses, not for undue hardship.

Special expenses are considered in determining an amount in sole or split custody situations. If you are in a shared custody situation, the court would look at all the needs of the child, including any special expenses, and both parents' ability to pay, in determining the amount of child support.

Claims for undue hardship may be made no matter what custody arrangements are in place: sole, split or shared.

When, and to whom, must a paying parent provide income information? How much time is allowed to do this?

Paying parents must provide evidence of their annual incomes. Depending on the circumstances, other people – such as the receiving parent, or a child at the age of majority who earns money, or a child in a shared custody arrangement – may also be required to provide proof of income. In all cases, documents provided to the court must also be given to the other parent. People who live in Canada or the United States must provide the documents within 30 days. Those who live elsewhere must do so within 60 days. (See page 17)

Does a child attending university or other post-secondary education still qualify for child support?

In many cases, the answer is yes. Divorcing parents might be obliged, within reason, to contribute to their child's support and education. Remember, though, that scholarships, bursaries, tax credits, and the child's own financial resources from employment are taken into account in assessing a fair amount of support. Modifications to the *Divorce Act* are not meant to change case law and the way the courts have generally granted child support for children over the age of majority.

If I follow the guidelines, do I still need a lawyer?

The guidelines are designed to encourage people to settle out of court, because they will know in advance what the court order would be if they can't agree. If the parents are able to agree with one another, the guidelines and tables will take the mystery out of arriving at a fair amount of child support, eliminating the need for lawyers to assist with lengthy and costly negotiations. If the parents are unable to agree to apply the guidelines, keep in mind that the court has no choice. It must apply the guidelines with only limited ability in certain circumstances to make adjustments. This booklet explains the guidelines in general terms. It is not intended to provide legal advice. (See page 3)

How do I get copies of the tables and workbook?

This booklet, *Federal Child Support Guidelines - A New Approach,* should be used with the tables and the workbook. You may order, free of charge, copies of the federal tables (please specify the names of the provinces or territories for which you require tables), the workbook on the child support guidelines, or additional copies of this publication by writing to the following address:

Publications
Child Support Team
Department of Justice Canada
239 Wellington Street
Ottawa, Ontario
K1A 0H8.

Do the guidelines apply to me? I'm not sure whether my child support order is under federal law or provincial law.

Take a look at your child support order. It may state right there whether it's under the *Divorce Act*. If so, the federal guidelines apply. (See page 3)

Part 3 contains two annexes that present additional details on two aspects of the guidelines. This information may be useful in certain situations.

Annex A *Income Tax Treatment of Child Support*

Changes in Taxation Rules for Child Support

The guidelines are part of a package of new child support measures, which also include important changes to the way child support payments are taxed. The *Income Tax Act* has been amended so that, for new orders and agreements, or for variation of existing orders and agreements made after April 30, 1997, the receiving parent no longer pays tax on the child support received and the paying parent no longer obtains a tax deduction for the amount paid.

If you already have a child support order or agreement and you wish to compare your current level of child support to the amount that you may be entitled to under the new guidelines, remember that the child support amounts in the guidelines have been calculated under the assumption that the receiving parent does not have to include this amount in his or her income and the paying parent does not deduct it. Under the old tax treatment, child support may have been higher in some cases to compensate the receiving parent for the taxes that he or she would have to pay.

The new tax rules apply in the following cases:

- written agreements made after April 30, 1997
- court orders made after April 30, 1997
- written agreements or court orders made prior to May 1, 1997, which specifically provide that the new tax rules will apply as of a date after April 30, 1997
- cases where the parents jointly sign and file a new form available from Revenue Canada stating that the new tax rules will apply as of a date after April 30, 1997 to their existing orders or agreements, without having changed the amount set out in the order or agreement
- cases where there is an existing written agreement or order prior to May 1997 and that agreement is varied after April 1997 to change the amount of child support, the new tax rules apply as of the date of the payment changes

The parents can agree between themselves to opt for the new tax treatment. But if only one of the parents wishes to obtain the new tax treatment, this can be done without the agreement of the other. Either parent, with or without the assistance of a lawyer, may apply to the court to obtain an order that will convert the old order to one that includes the new tax treatment. More specific advice should be obtained from your lawyer.

Although the federal guidelines for child support do not apply to common-law couples, the new tax treatment will be available to them in the same way as it is for married couples.

For more information on income tax and child support, you can contact Revenue Canada at 1-800-959-8281.

Taxation Rules for Spousal Support

The guidelines do not directly affect the tax treatment of spousal support. The new tax rules will apply to the child support payments and the old tax rules continue to apply to spousal support. This means that child support will be paid and received on a tax-free basis, and spousal support will be taxed in the hands of the receiving spouse and be tax deductible to the payer. However, deductions for spousal support will be allowed only if child support payments are up to date. For more information on the tax implications of spousal support, you may wish to refer to the income tax guide or contact Revenue Canada at 1-800-959-8281.

Annex B:

Other factors determining "annual income" for purposes of the guidelines

If a parent believes that the most current information provided is not a fair reflection of either his or her income or the other parent's income – and the parents cannot agree – he or she can ask the court to look at other factors to assess the correct level of income.

The court may consider:

- whether income has steadily increased or decreased over the past three years;
- if income has fluctuated significantly over the past three years;
- if the parent has received a one-time amount of money (for example, an inheritance) – all or none of this amount may be included;
- if there were exceptional business or investment profits or losses during a particular year; and
- if the parent is a shareholder, officer or director of a corporation, all or part of the corporation's pre-tax income for the most recent taxation year, or what the person would earn if he or she were being paid for the services provided to the corporation (as long as that amount is less than the corporation's pre-tax income). In determining a corporation's pre-tax income, the court will include the corporation's payments such as salaries, wages, management fees and similar expenses.

Income may also be attributed for purposes of applying the guidelines, for example, where the person:

- is found to be intentionally underemployed or unemployed (unless the reason is related to caring for a child, or reasonable education, or health needs of the parent);
- is not required to pay federal or provincial income tax;
- lives in a country where income tax rates are significantly lower than Canada's;
- has withheld income information;
- gets a large part of income from dividends, capital gains or other sources with a lower tax rate;
- is, or will be, receiving income or other benefits from a trust;
- is placing income elsewhere to conceal it (for example, putting it in someone else's name);
- does not reasonably use property and resources to generate income (for example, the paying parent may have too much money tied up in land or business investments, reducing the amount of cash available for child support); or
- unreasonably deducts expenses from income.

The court will attempt to obtain a precise income figure for either or both of the parents, one that fairly reflects the parent's actual income, in order to properly apply the guidelines.